



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

JUN 01 2005

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Flegenheimer, President
Michigan Sugar Company
4800 Fashion Square Blvd.
Suite 300
Saginaw, Michigan 48604

Re: Notice of Violation
Michigan Sugar Company
Bay City and Sebawaing, Michigan
Facilities

Dear Mr. Flegenheimer:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Notice of Violation (NOV) to Michigan Sugar Company (MSC or you) under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). We find that you are violating Part C of the Act, 40 C.F.R. § 52.21, and the Michigan State Implementation Plan (SIP) at your Bay City and Sebawaing, Michigan facilities.

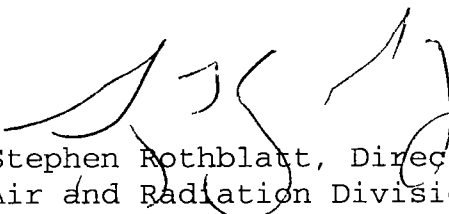
Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action. The options we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the rules cited in the NOV.

We are offering you an opportunity to confer with us about the violations alleged in the NOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan to have key technical and management personnel attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The U.S. EPA contact in this matter is Rhonda Land. You may call her at (312) 886-6867 to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

 *ACTING*
Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

cc: Bruce Goodman, Varnum, Riddering, Schmidt, & Howlett
Steven Smock, Environmental Engineer
Robert Kucinski, Environmental Manager
Tom Hess, Michigan DEQ
Mark Reed, Michigan DEQ

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Michigan Sugar Company)	NOTICE OF VIOLATION
Bay City and Sebawaing,)	
Michigan)	EPA-5-05-MI-05
)	
)	
Proceedings Pursuant to)	
Section 113(a)(1) of the)	
Clean Air Act, 42 U.S.C.)	
§ 7413(a)(1))	
_____)	

NOTICE OF VIOLATION

The United States Environmental Protection Agency (U.S. EPA) is issuing this Notice of Violation (NOV) under Section 113(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1). U.S. EPA finds that Michigan Sugar Company (MSC) is violating Part C of the Act, 40 C.F.R. § 52.21, and the Michigan State Implementation Plan (SIP) adopted under the Act, at the MSC Bay City and Sebawaing facilities as follows:

Statutory and Regulatory Background

1. Part C of the Act, 42 U.S.C. §§ 7470-7479, requires the Administrator to promulgate regulations to prevent the significant deterioration of air quality in areas designated as attainment or unclassifiable in accordance with Section 107(d) of the Act, 42 U.S.C. §§ 7407(d). In accordance with this, the Administrator promulgated regulations at 40 C.F.R. § 51.166 setting forth SIP approval requirements for the prevention of significant deterioration (PSD) of air quality.
2. Section 161 of the Act, 42 U.S.C. § 7471, and 40 C.F.R. § 51.166(a)(1) require that the States submit SIPs containing emission limitations and other measures necessary to prevent the significant deterioration of air quality.

3. On June 19, 1978, U.S. EPA promulgated PSD regulations pursuant to Part C of the Act. (45 Federal Register 26403). U.S. EPA revised the PSD regulations on August 7, 1980 (45 Federal Register 52676), codified at 40 C.F.R. § 52.21 et seq.
4. The State of Michigan has not promulgated its own PSD regulations and, therefore, has not satisfied the requirements of Sections 160-165 of the Act in its SIP. The provisions of 40 C.F.R. § 52.21, except paragraph 40 C.F.R. § 52.21(a)(1), are therefore incorporated, and made a part of, the applicable Implementation Plan for the State of Michigan at 40 C.F.R. § 52.1180(b). (45 Fed. Reg. 52741)
5. Section 165 of the Act and 40 C.F.R. § 52.21 prohibit construction of a major stationary source or a major modification without a permit issued under the PSD regulations in any area which has attained the National Ambient Air Quality Standards (NAAQS).
6. 40 C.F.R. § 52.21(b)(1)(i) defines "Major Stationary Source" as (a) any of the listed stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act or (b) any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act.
7. 40 C.F.R. § 52.21(b)(2)(i) defines "Major Modification" as any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any air pollutant subject to regulation under the Act.
8. 40 C.F.R. § 52.21(b)(2)(iii)(f) states that "physical change or change in the method of operation" shall not include an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR § 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR § 51.166.

9. 40 C.F.R. § 52.21(b)(3)(i) defines "Net Emissions Increase" as the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
10. 40 C.F.R. § 52.21(b)(4) defines "Potential to Emit" (PTE) as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design.
11. 40 C.F.R. § 52.21(b)(23)(i) defines "Significant" as in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide	100 tpy
Ozone	40 tpy of volatile organic compounds
Particulate matter	25 tpy of particulate matter emissions; 15 tpy of PM ₁₀ emissions

12. 40 C.F.R. § 52.21(i) provides that no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements.
13. 40 C.F.R. § 52.21(j) provides that for each pollutant subject to regulation under the Act for which a major modification would result in a significant net emissions increase at the source, the owner or operator of the major modification shall apply Best Available Control Technology (BACT) to each proposed emissions unit at which the increase would occur as the result of physical changes and changes in the methods of operation of the unit.

14. 40 C.F.R. § 52.21(k) through (r) provide that the owner or operator of a major modification shall show that the allowable emissions increase will not contribute to a violation of any National Ambient Air Quality Standards (NAAQS), and that the increase will not be in excess of any applicable maximum allowable increase over the baseline ambient air concentration.
15. 40 C.F.R. § 52.21(r)(4) provides that at such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.
16. 40 C.F.R. § 52.23 provides, among other things, that failure to comply with any approved regulatory provision of a SIP or with any permit condition, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, subjects the person or governmental entity so failing to comply, in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

Factual Background

Michigan Sugar Company - Sebewaing Facility

17. MSC owns and operates a sugar beet processing plant in Sebewaing, Michigan (Sebewaing facility).
18. Sebewaing, Michigan is an attainment area for, amongst other pollutants, CO, VOC, PM and PM₁₀. 40 C.F.R. § 81.323.
19. On or about August 8, 1980, MSC commenced construction of pulp dryer 3 at its Sebewaing facility.

20. At the time of construction of pulp dryer 3, the MSC Sebewaing facility was a major stationary source as defined in 40 C.F.R. § 52.21(b)(1)(i).
21. Emissions from pulp dryer 3 at the MSC Sebewaing facility exceed the significant level, as defined in 40 C.F.R. § 52.21(b)(23)(i) for CO, VOC, PM and PM₁₀.
22. The installation of pulp dryer 3 at the MSC Sebewaing facility was a major modification as defined in 40 C.F.R. § 52.21(b)(2).
23. Therefore, MSC is required to comply with the Act, 40 C.F.R. § 52.21 and the Michigan SIP as a result of its installation of pulp dryer 3 at its Sebewaing facility.

Michigan Sugar Company - Bay City Facility

24. MSC owns and operates a sugar beet processing plant in Bay City, Michigan (Bay City facility).
25. Bay City, Michigan is an attainment area for, amongst other pollutants, CO, VOC, PM and PM₁₀. 40 C.F.R. § 81.323.
26. On or about November 1, 1984, MSC commenced construction of pulp dryer 3 at its Bay City facility.
27. At the time of construction of pulp dryer 3, the MSC Bay City facility was a major stationary source as defined in 40 C.F.R. § 52.21(b)(1)(i).
28. Emissions from pulp dryer 3 at the MSC Bay City facility exceed the significant level, as defined in 40 C.F.R. § 52.21(b)(23)(i) for CO, VOC, PM and PM₁₀.
29. The installation of pulp dryer 3 at the MSC Bay City facility was a major modification as defined in 40 C.F.R. § 52.21(b)(2).
30. Therefore, MSC is required to comply with the Act, 40 C.F.R. § 52.21 and the Michigan SIP as a result of its installation of pulp dryer 3 at its Bay City facility.

31. On October 30, 1995, MSC increased the annual hours of operation at its Bay City facility. This increase in hours required a change to federally enforceable permit conditions for dryers 1, 2 and 3 and boilers 5, 6, and 7.
32. At the time of the increase in annual hours of operation, the MSC Bay City facility was a major stationary source as defined in 40 C.F.R. § 52.21(b)(1)(i).
33. Emissions from the increase in annual hours of operation at the MSC Bay City facility exceed the significant level, as defined in 40 C.F.R. § 52.21(b)(23)(i) for CO and VOC.
34. The increase in annual hours of operation at the MSC Bay City facility was a major modification as defined in 40 C.F.R. § 52.21(b)(2).
35. Therefore, MSC is required to comply with the Act, 40 C.F.R. § 52.21 and the Michigan SIP as a result of the increase in annual hours of operation at its Bay City facility.

Violations

36. MSC violated, and continues to violate Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(i), and the Michigan SIP, by beginning construction of pulp dryer 3 at the Sebewaing facility without first obtaining a complete PSD permit for VOC and CO.
37. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(j)(3), and the Michigan SIP, by failing to install BACT for VOC and CO on pulp dryer 3 at the Sebewaing facility.
38. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(k) through (r), and the Michigan SIP, by failing to conduct a complete source impact analysis for VOC and CO prior to the construction of pulp dryer 3 at the Sebewaing facility.
39. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(i), and the Michigan SIP, by beginning construction of pulp dryer 3 at the Bay City

facility without first obtaining a complete PSD permit for VOC and CO.

40. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(j)(3), and the Michigan SIP, by failing to install BACT for VOC and CO on pulp dryer 3 at the Bay City facility.
41. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(k) through (r), and the Michigan SIP, by failing to conduct a complete source impact analysis for VOC and CO prior to the construction of pulp dryer 3 at the Bay City facility.
42. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(i), and the Michigan SIP, by increasing the hours of operation of dryers 1, 2 and 3 and boilers 5, 6, and 7 at the Bay City facility without first obtaining a complete PSD permit for VOC and CO.
43. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(j)(3), and the Michigan SIP, by failing to install BACT for VOC and CO on pulp dryers 1, 2, and 3 and boilers 5, 6, and 7 at the Bay City facility.
44. MSC violated, and continues to violate, Section 165(a)(1) of the Act, 40 C.F.R. § 52.21(k) through (r), and the Michigan SIP, by failing to conduct a complete source impact analysis for the VOC and CO emissions increase as a result of the increased annual hours of operation of pulp dryers 1, 2, and 3 and boilers 5, 6, and 7 at the Bay City facility.

6/1/05
Date

Stephen Rothblatt, ACTING
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Notice of Violation, No. EPA-5-05-MI-05, by Certified Mail, Return Receipt Requested, to:

Mark Flegenheimer, President
Michigan Sugar Company
4800 Fashion Square Blvd.
Suite 300
Saginaw, Michigan 48604

I also certify that I sent copies of the Notice of Violation by first class mail to:

Mark Reed
Saginaw Bay Air Quality Division District Supervisor
Michigan Department of Environmental Quality
Suite 1
503 Euclid Avenue
Bay City, Michigan 48706-2965

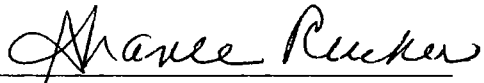
Tom Hess
Compliance and Enforcement Section Supervisor
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

Bruce Goodman
Varnum, Riddering, Schmidt, & Howlett
Bridgewater Place
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, Michigan 49501-0352

Steven Smock
Michigan Sugar Company
4800 Fashion Square Blvd.
Suite 300
Saginaw, Michigan 48604

Robert Kucinski
Michigan Sugar Company
2600 S Euclid
P.O. Box 917
Bay City, Michigan 48707

on the 2 day of June 2005


Sharlee Rucker, Secretary
AEGAS (MI/WI)

Certified Mail Receipt Number: 7001 0320 0006 1558 6110